

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES of AMERICA,

Plaintiff,

v.

Criminal Case No.: 1:13CR7

TIMOTHY LINGO,

Defendant.

RECOMMENDED SUMMARY ORDER FOLLOWING PRETRIAL CONFERENCE

On March 22, 2013, the parties came before the undersigned magistrate judge for a final pretrial conference. Defendant was present in person and represented by Federal Public Defender Brian Kornbrath and the United States was represented by Assistant United States Attorney Zelda Wesley. The matter was referred to the undersigned by order of the United States District Judge. For the reasons stated on the record of that conference, the undersigned recommends the District Judge adopt the following rulings made at and as a result thereof:

1. **ADOPTED** Defendant's stipulation that he "has been convicted of a 'crime punishable by imprisonment for a term exceeding one year, as defined in 18 USC § 921(a)(20)."
2. **GRANTED WITHOUT OBJECTION** by the United States
Defendant's motion in limine [DE 24] prohibiting government from introducing in its case in chief Defendant's prior felony convictions set out in the indictment which make him a prohibited person absent Defendant taking the stand or otherwise raising the issue of admissibility.
3. **ORDERED** Government to file written stipulation by close of business on March 22, 2013 confirming oral stipulation offered and accepted by Defendant at final

pretrial conference to the effect that firearm in question, a .45 caliber Rock Island Armory pistol, was operational and meets interstate nexus requirement thereby eliminating the need to call a witness [BATF Agent Greg Perry] for the government to verify the same.

4. **ORDERED** Defendant to provide Government by close of business on March 22, 2013 with copies of the W-2 statements he intends to offer in evidence in an effort to show that the money seized from him by the police was income earned from gambling activities.
5. **ORDERED** Defendant to provide Government by close of business on March 27, 2013 with 902 verifications of any W-2's he intends to offer in evidence in an effort to show that the money seized from him by the police was income earned from gambling operations.
6. **ORDERED** Government to provide Defendant with copies of the laboratory report relative to the testing result of the alleged cocaine hydrochloride before the close of business on March 27, 2013.
7. **ORDERED** both the Government and the Defendant pre-mark each exhibit that is intended to be introduced in evidence in the order of its anticipated introduction by not later than the close of business on March 27, 2013.
8. **ORDERED** that the Government submit a supplemental disclosure to Defendant by not later than close of business on March 27, 2013 indicating whether the cash seized was photographed, copied, itemized or otherwise memorialized with respect to the denominations and other identifying facts of the cash/bills.
9. **ORDERED** that Defendant file any objection or motion he may have to the

testimony or evidence offered by the Government relative to the cash money seized by not later than close of business on March 28, 2013 and that the Government file its response thereto not later than March 29, 2013.

10. **ORDERED** the Government to produce to Defendant the laboratory report and results from the testing of the alleged cocaine hydrochloride by not later than close of business March 27, 2013.
11. **ORDERED** the United States:
 - a. file its proposed voir dire not later than close of business March 25, 2013;
 - b. file its proposed jury instructions, if any, by close of business March 25, 2013;
 - c. complete its review of Defendant's previously filed proposed voir dire and jury instructions and make any written objection it now has to the same by close of business March 26, 2013.
12. **ORDERED** Defendant to complete its review of Government's filed proposed voir dire and jury instructions and make any written objection it now has to the same by close of business March 26, 2013.
13. **ORDERED** Defendant to make written request by March 25, 2013 for supplemental disclosure relative to intelligence gather by government relative to Defendant. Government to provide such supplemental disclosure by March 26, 2013 notwithstanding that it will not seek to introduce the same against Defendant during presentation of the Government's case in chief unless sooner brought in by Defendant.
14. **ORDERED** Government to provide Defendant with supplemental disclosure of

witnesses ability to identify Defendant from alleged observations of a man on April 9, 2011 by March 27, 2013. **ORDERED** Defendant to file any written objection or motion he may have with respect to witness identification by March 27, 2013.

ORDERED Government to file any response it may have to Defendant's objection or motion [if any be filed], by close of business of March 29, 2013.

15. **ORDERED** Government is precluded from introducing any Rule 404(b) evidence during its case in chief unless the Defendant opens the door to such introduction.

The clerk is Directed to provide electronic notice of the entry of this recommended order to counsel for the parties of record.

The parties are hereby notified to file any written objection they may have to this Recommended Order by close of business on March 26, 2013.

If the District Judge adopts this recommended order as the Summary Order Following Pretrial Conference, the Clerk is directed to remove Defendant's Motion In Limine Re: Prior Conviction Specified In Indictment [DE 24] from the docket of motions actively pending before the Court.

RECOMMENDED THIS THE 24TH DAY OF MARCH, 2013.

s/ *John S. Kaull*
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE

NO OBJECTIONS HAVING BEEN FILED BY MARCH 26, 2013 OR OBJECTIONS HAVING BEEN FILED AND THE COURT FINDING NO MERIT TO THE SAME, THIS RECOMMENDED SUMMARY ORDER FOLLOWING PRETRIAL CONFERENCE IS

ADOPTED AS THE SUMMARY ORDER FOLLOWING PRETRIAL CONFERENCE.

IT IS SO ORDERED.

Dated:

IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

**OBJECTIONS HAVING BEEN TIMELY FILED AND/OR FOR OTHER REASONS
APPEARING TO THE COURT, THIS RECOMMENDED SUMMARY ORDER
FOLLOWING PRETRIAL CONFERENCE IS NOT ADOPTED AS THE SUMMARY
ORDER FOLLOWING PRETRIAL CONFERENCE.**

IT IS SO ORDERED.

Dated:

IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE